

)	
In re:)	
)	Case No. 10-31607
GARLOCK SEALING TECHNOLOGIES)	
LLC, <u>et al.</u>,)	Chapter 11
)	
)	(Jointly Administered)
Debtors.¹)	
)	

[FILED UNDER SEAL]

¹ The Debtors are Garlock Sealing Technologies LLC (“Garlock”), Garrison Litigation Management Group, Ltd. and The Anchor Packing Company.

TABLE OF CONTENTS

	Page(s)
I. DR. HECKMAN	1
II. COLTEC'S NEW THEORY	5
III. DR. RABINOVITZ	11
IV. PATH FORWARD.....	12
V. CONCLUSION	14

TABLE OF AUTHORITIES

Page(s)

Cases

<u>In re A.H. Robins, Inc.</u> , 880 F.2d 694 (4th Cir. 1989)	11, 13
<u>In re Armstrong World Indus., Inc.</u> , 348 B.R. 111 (D. Del. 2006)	2
<u>Dover Elevator Sys., Inc. v. United Steel Workers</u> , No. 2:97CV101, 1998 WL 527290 (N.D. Miss. July 2, 1998)	7
<u>In re Eagle-Picher Indus., Inc.</u> , 189 B.R. 681 (Bankr. S.D. Ohio 1995)	2
<u>Official Comm. of Asbestos Claimants v. Asbestos Property Damage Comm. (In re Federal- Mogul Global, Inc.)</u> , 330 B.R. 133 (D. Del. 2005)	2
<u>Owens Corning v. Credit Suisse First Boston</u> , 322 B.R. 719 (D. Del. 2005)	2
<u>In re Specialty Products Holding Corp.</u> , No. 10-11780, 2013 WL 2177694 (Bankr. D. Del. May 20, 2013)	2

Statutes

11 U.S.C. § 502(b)	10
11 U.S.C. § 1129(b)(2)(B)	13

Other Authorities

1 Collier on Bankruptcy ¶ 3.06[1] (16th ed.)	13
4 Collier on Bankruptcy ¶ 502.04[3] (16th ed.)	13
S. Todd Brown, <u>How Long is Forever This Time? The Broken Promise of Bankruptcy Trusts</u> , 61 Buff. L. Rev. 537 (2013)	8, 9, 11
<u>The Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel</u> , http://www.nobelprize.org/nobel_prizes/economic-sciences/articles/lindbeck/index	3

Joseph W. Grier, III, the future asbestos claimants' representative (the "FCR"), through counsel, hereby responds to Coltec Industries Inc.'s ("Coltec") Post-Trial Brief (Dkt. No. 3193) following the July/August 2013 estimation hearing (the "Estimation Hearing"). Coltec's brief presents a new theory that was absent from its previous briefs and was not addressed by Coltec's single witness, Dr. James Heckman. Moreover, Coltec relies on a new chart that was prepared after the Estimation Hearing and not offered into evidence or made the subject of examination. As such, a response is appropriate. The FCR does not respond to the Debtors' Post-Trial Brief (Dkt. No. 3205) because the arguments raised therein are familiar to the Court and have been previously addressed by the parties. Further briefing in that regard would unnecessarily burden the Court.

I. Dr. Heckman

Before delving into Coltec's new theory, it is worth reviewing the way in which Coltec relied upon Dr. Heckman at the Estimation Hearing and in its Post-Trial Brief. Doing so demonstrates the weakness of Coltec's new theory and the inconsistency of its arguments.

Dr. Heckman, an econometrician, acknowledged that Dr. Peterson's and Dr. Rabinovitz's forecasts of Garlock's asbestos liabilities use Garlock's actual mesothelioma claims data, the respected Nicholson model, and inflation and risk-free discount rates drawn from reliable government and market sources.² He also admitted that the factors that Garlock and the plaintiffs deemed relevant when fixing the merits (and, therefore, the price) for asbestos claims, were factors he would consider in constructing a competent empirical analysis.³ Nevertheless,

² Tr. 4268:8-4269:15, 8/9/13 (Heckman). (The transcript of the Estimation Hearing is referred to as "Tr." herein.)

³ Tr. 4270:15-4276:24, 8/9/13 (Heckman) ("Q. Any competent empirical analysis, those would be your words, would at least start with those factors? A. Those are a plausible list of factors.").

he opined that their forecasts were unreliable because the experts had not prepared confidence intervals for their estimates.⁴ In essence, Dr. Heckman rejected the wisdom of numerous courts that no estimate will ever be perfect and it is reasonable to predict asbestos liabilities by reference to a robust sample of thousands of recent claim resolutions, which resolutions incorporate current claiming trends.⁵ He said instead: “You don’t just say I picked up some method because some judge told me somewhere that this is what you’re supposed to do.”⁶ Critically, Dr. Heckman’s argument was not that the FCR and the ACC estimates were right or wrong. In fact, he admitted that they could be underestimates, declaring – “I said I didn’t know the truth. I’m not God.”⁷

Dr. Heckman candidly admitted that there was nothing groundbreaking about his argument, noting that it could easily have been made by a University of North Carolina undergraduate with a statistics major.⁸ In truth, the FCR and the ACC could have stipulated, if asked in advance, that none of the reports prepared by the experts in this case, including the Debtors’ expert, contained confidence intervals for the ultimate estimates. Nonetheless, Coltec chose to rely on, and dedicate a large portion of its Post-Trial Brief to Dr. Heckman, who is the

⁴ Tr. 4235:2-4236:13, 8/9/13 (Heckman) (“I would simply say that right now, based on what I’ve seen, and based on what I think are conventional standards in literature and a vast literature, they have not actually presented reports that would meet those [statistical] standards, standards that are uniform in many areas of science and knowledge.”); Tr. 4246:20-24, 8/9/13 (Heckman) (criticizing Dr. Peterson and Dr. Rabinovitz for failing to report confidence intervals).

⁵ See In re Specialty Products Holding Corp., No. 10-11780, 2013 WL 2177694 (Bankr. D. Del. May 20, 2013); In re Armstrong World Indus., Inc., 348 B.R. 111 (D. Del. 2006); Owens Corning v. Credit Suisse First Boston, 322 B.R. 719 (D. Del. 2005); Official Comm. of Asbestos Claimants v. Asbestos Property Damage Comm. (In re Federal-Mogul Global, Inc.), 330 B.R. 133 (D. Del. 2005); In re Eagle-Picher Indus., Inc., 189 B.R. 681 (Bankr. S.D. Ohio 1995).

⁶ Tr. 4276:18-20, 8/9/13 (Heckman).

⁷ Tr. 4269:18-25, 8/9/13 (Heckman).

⁸ Tr. 4256:20-4258:2, 8/9/13 (Heckman) (“My guess is you can get a Statistics major from UNC to come down and testify exactly to the question of, how come they can come up with an estimate without reporting estimates of sample variability?”).

recipient of an economics prize from the Sveriges Riksbank, commonly referred to as the Nobel Prize in Economics, and charges \$2,300 an hour.⁹

But Dr. Heckman's testimony, whether at the undergraduate level or not, did not illuminate the key issue before the Court: what are Garlock's mesothelioma liabilities? That is because Dr. Heckman, who has no expertise with asbestos estimation,¹⁰ did not provide an asbestos estimate for the Court's consideration.¹¹ Furthermore, as noted, he was unable to say whether Dr. Peterson's or Dr. Rabinovitz's estimates were right or wrong¹² and acknowledged that both estimates could be underestimates.¹³ In sum, Dr. Heckman, while certainly a well-credentialed academic, had his role limited to a theoretical critic who says, "I have never done what you do, I cannot tell you exactly how to do it, it may very well be impossible to do it perfectly given all the variables, I cannot even tell you if your result in this case is wrong, and I am not willing to tell you what I think the result should be, but I do think the Court should reject your work as unreliable because you failed to include confidence intervals."

⁹ Tr. 4225:9-14, 4261:16-17, 4262:10-22, 8/9/13 (Heckman). The Riksbank created the prize in 1968 to mark its 300th anniversary. The Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel, http://www.nobelprize.org/nobel_prizes/economic-sciences/articles/lindbeck/index.html. It is not one of the Nobel Prizes established by the will of Alfred Nobel in 1895 but is commonly referred to as the Nobel Prize in Economics and is generally regarded as a very prestigious award in the field of economics. See *id.*

¹⁰ Tr. 4256:10-19, 8/9/13 (Heckman) ("Q. . . . You personally have never forecast pending or future asbestos claims, have you, sir? A. Only to the extent that I did these calculations here you see in Table 1, Sensitivity Studies. But I have not done a systematic study of the underlying data. I haven't looked at the individual records and done so. No."); Tr. 4266:5-15, 8/9/13 (Heckman) ("I said earlier in my testimony answering the direct statement that I have not worked directly in making asbestos forecasts but the principles were general across many different areas of knowledge.").

¹¹ Tr. 4267:9-11, 8/9/13 (Heckman) ("Q. You're not here today to give Judge Hodges an estimate of asbestos liabilities, are you? A. No.").

¹² Tr. 4269:16-25, 8/9/13 (Heckman) ("Q. Now, as I understand your testimony, you're not saying that Dr. Peterson's number's wrong; right? A. I said I didn't know the truth. I'm not God. . . . Q. And the same is true of Dr. Bates -- Dr. Rabinovitz; right? A. Correct.").

¹³ Tr. 4270:11-14, 8/9/13 (Heckman) ("Q. Dr. Heckman, the numbers could be underestimates couldn't they? A. They could be underestimates; they could be overestimates.").

It is of some moment that Dr. Heckman was not only a theoretical critic who was unwilling to offer an expert opinion of practical value to the Court, he was also a selective theoretical critic. That is because Dr. Heckman pointedly failed to review Dr. Bates' work to determine if, in his opinion, Dr. Bates' estimate was also statistically "unreliable."¹⁴ Thus, while Coltec, relying on Dr. Heckman, colorfully resorted to Mark Twain to denounce Dr. Rabinovitz's and Dr. Peterson's reports as "asbestos statistics lies," a beautifully misplaced insult in that Coltec's criticism is that their reports lacked statistical analysis, the Court heard nothing from Dr. Heckman about the statistics (or lack thereof) in Dr. Bates' report. It does not take a Nobel laureate or \$2,300 an hour to figure out why. Not only did Dr. Bates fail to prepare confidence intervals for his ultimate estimate for the Court's review but his work relies on a limited sample of verdict data from other companies, shows statistical selection bias, predicts values that do not reflect Garlock's reality, reflects a radical departure from Dr. Bates' prior work for the Debtors, derives a number that conveniently preserves maximum equity values for his long-time client, Coltec, and is otherwise not grounded in an accepted theory. In fact, it was Dr. Bates who, relying on statistics, tried to make the argument that defense costs were the only factor driving settlement values when his client's own witnesses and documents proved the contrary. That is an argument that would have certainly elicited a witticism from Mark Twain.

There is great irony in Coltec's selective approach: Dr. Heckman's Nobel Prize was for his work in solving the problems associated with selection bias.¹⁵ Thus, he was presumably well prepared to offer an expert opinion on that subject. However, evidencing some notable selection

¹⁴ Tr. 4267:15-19, 8/9/13 (Heckman) ("Q. You're not offering an opinion to Judge Hodges at all, and you weren't asked to offer an opinion, and no opinion was elicited from you on direct examination concerning the report that Dr. Bates did; correct? A. Not on the direct testimony. No.").

¹⁵ Tr. 4265:5-10, 8/9/13 (Heckman) ("Q. . . . Now, 'selection bias,' that's something that occurs in statistics. Right? A. Yes. And it's what the Nobel Prize committee awarded my work on that topic.").

bias of his own, Dr. Heckman chose not to analyze Dr. Bates' work and report his findings to the Court. Instead, as an academic and selection bias expert who wishes to be seen as a paragon of statistical perfection, he conducted a study of two estimates while ignoring the troublesome estimate prepared for his client. That, using Coltec's own words, is Dr. Heckman's "distinguishing mark as an 'expert' witness."¹⁶

Undaunted, Coltec proudly declares that it retained Dr. Heckman "to assist the Court by bringing to bear his enormous expertise—which is recognized and is in high demand across the world—on the question of whether the Court can **trust** the opinions of the Claimants' experts."¹⁷ But Dr. Heckman's conspicuous failure to analyze Dr. Bates' work causes an objective factfinder to question both his and Coltec's approach, not those of Dr. Rabinovitz or Dr. Peterson. More important, the decision to be selective renders Dr. Heckman's testimony useless to the Court. If the Court cannot compare how all three estimates fare under Dr. Heckman's criticism, it would be arbitrary and capricious to reject two by reference to that criticism but rely upon the one where the answer was kept from the Court.

II. Coltec's New Theory

Coltec's new theory is yet another example of this selective approach. While Coltec protested at the Estimation Trial that scientific perfection must be achieved in the FCR's and the ACC's estimates (but not Garlock's), Coltec's new theory is neither grounded in science nor evidence. Rather, it is the result of Coltec's post-trial syllogistic reasoning. Coltec first posits the rule that the most culpable asbestos defendants always file for bankruptcy protection before

¹⁶ Coltec Industries Inc.'s Post-Trial Brief, dated Nov. 11, 2013 (Dkt. No. 3193) ("Coltec Brief"), at 20 n.20.

¹⁷ Id. at 12 n.10 (emphasis added).

less culpable defendants.¹⁸ Coltec then posits that when the more culpable defendants file, their liability share is redistributed to the less culpable defendants remaining in the tort system.¹⁹ Coltec concludes, therefore, that the least culpable defendant will be the last to file and will experience the greatest transfer of liability, which will be least reflective of its liability when all defendants were still in the tort system.²⁰

It is readily apparent why Coltec did not want its new theory, which Coltec itself characterizes as “strange” and “counterintuitive,”²¹ subjected to scrutiny during the Estimation Hearing. First, many companies made asbestos containing products in the past but, unusually, Garlock continued doing so until 2001, long after the hazards of asbestos were well-known and other companies had ceased manufacturing such products.²² Under those facts, it is not clear which company deserves the appellation, “Most Culpable.” This is exacerbated by the reality that neither a plaintiff nor a defendant can prove definitively which company’s asbestos fiber caused a victim’s mesothelioma.²³ Second, even if “culpability” were a concept subject to crisp

¹⁸ Id. at 6-7.

¹⁹ Id. at 7-8.

²⁰ Id. at 8.

²¹ Id. at 14, 17.

²² Defendant Garlock Sealing Technologies LLC’s Responses to Plaintiff’s Interrogatories and Requests for Production to Defendants, Kilburn v. A.T. Callas Co., at GST-EST-0108978 (ACC-68) (“[Garlock’s] last asbestos-containing gasket sale is believed to have been in early 2001.”); see also Information Brief of Garlock Sealing Technologies LLC, dated June 7, 2010 (Dkt. No. 24), at 1-2, 10-12, 20 (“By 2001, Garlock had found substitutes for most industrial applications of asbestos gaskets and packing.”); Tr. 4215:4-6, 8/9/13 (Rabinovitz) (“One of the things that has maybe not been emphasized enough is that their product remained in the market for longer than is true of many other companies.”); Tr. 3478:10-14, 8/7/13 AM (McClain) (“In 1972, the insulation defendants stopped making asbestos insulation in pipe covering and block. It was outlawed by OSHA. So Garlock continued to make gaskets all the way in 2000 – asbestos gaskets until 2000, 2001.”).

²³ Tr. 2154:18-2155:7, 7/31/13 (Welch) (“Q. Now from what you said before about the cumulative exposure, does that mean that you or any other scientist can’t take an individual patient and say, okay, we’re going to do an autopsy now. We can identify the fiber and we know it was made by Johns-Manville? A. Well, yeah, there’s many reasons you can’t do that . . .”).

measurement, it does not determine the timing of a company's bankruptcy filing. Rather, timing is dependent not only on the extent of the claims brought against a company but, among other things, the extent of its resources, including insurance, the nature of its products, the strength of its defenses, the competence of its counsel, and the strategies adopted by its management and so on. Garlock's own experience shows this: it filed when it did because, among other things, the claims against it threatened to "deplete rapidly" its remaining insurance.²⁴ As such, Coltec's simplified syllogism collapses from the get-go.

The syllogism is also lacking in evidentiary support. Coltec relies on a chart that it attaches to its Post-Trial Brief. Coltec then goes to some pains to explain that the chart is admissible under Federal Rules of Evidence 803(18) and 1006.²⁵ Coltec misses the point. The Estimation Hearing is over. The time to present evidence was during the Estimation Hearing so the Court and the parties could have reviewed that evidence and subjected it to direct and cross examination. Courts rarely have to confront this issue because it is so elemental but, when they do, they have no problem ruling that the presentation of new evidence with a post-hearing brief, as Coltec's seeks to do here, is wrong. See, e.g., Dover Elevator Sys., Inc. v. United Steel Workers, No. 2:97CV101, 1998 WL 527290, at *2 (N.D. Miss. July 2, 1998) ("[I]t is fundamentally unfair to take on new evidence after the close of the hearing and not offer the opponent an opportunity for rebuttal. . . . [T]he presentation of new evidence *ex parte* with the post-hearing brief violates all semblance of fair play.").

But even if the Court were to accept the chart into the evidentiary record of the Estimation Hearing, it does not help Coltec's cause. The chart purports to compare (i) the

²⁴ Affidavit of Donald G. Pomeroy, II in Support of First Day Relief, dated June 5, 2010 (Dkt. No. 3), ¶ 19.

²⁵ Coltec Brief, at 15 n.13.

amount of mesothelioma funding for each known section 524(g) trust to (ii) the amounts Garlock paid to resolve mesothelioma claims since each of those debtor's bankruptcy filings plus the amounts the FCR's expert submits Garlock should pay in the future, including defense costs and liquidated and disputed settlements.²⁶ Coltec declares that this must be proof of the unfairness of the "system" because, by Coltec's calculations, Garlock's funding commitment exceeds the commitment of the more culpable defendants, such as Federal Mogul, National Gypsum, Babcock & Wilcox, Owens Corning-Fibreboard and others. In Coltec's words: "That [Garlock is] being called to pay substantially more into the system than these frontline, major asbestos defendants is the epitome of disproportionality."²⁷

One can only wonder what Dr. Heckman's hypothetical UNC student would have to say about this decidedly non-scientific approach. She would likely point out the self-evident truth that all asbestos debtors expend significant resources in the tort system **before** filing for bankruptcy and it is only upon confirmation of a reorganization plan that they transfer funds, often insufficient, to a section 524(g) trust. Thus, to determine what any one debtor paid in total for mesothelioma funding, a fact finder cannot look solely at what was funded into a trust. Nor can a debtor's asbestos liability be assumed to be what it paid into a trust. Rather, in many instances the liability is much more. In fact, no one would dispute that the payment percentages for the section 524(g) trusts listed on the chart are less than 100%.²⁸

²⁶ Id. at 15-16 and Exhibit A.

²⁷ Id. at 16.

²⁸ See, e.g., S. Todd Brown, How Long is Forever This Time? The Broken Promise of Bankruptcy Trusts, 61 Buff. L. Rev. 537, 595-97 (2013); RAND Institute for Civil Justice, Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts (2010) ("RAND Report"), at Appendix B (GST-0138).

Just by way of example, Coltec lists Johns-Manville Corporation's mesothelioma funding in its chart as \$2.5 billion and uses that to suggest how unfair it would be for Garlock to fund a trust with \$1.3 billion. Surely, Coltec reasons, big bad Johns-Manville's asbestos liability should be many multiples more than not-so-bad Garlock's. But Coltec omits from the chart all of the payments Johns-Manville made before it filed for bankruptcy. We know from testimony at the Estimation Trial that for the years before its bankruptcy filing, Johns-Manville was bearing the brunt of pending asbestos claims.²⁹ It undoubtedly paid much more than \$2.5 billion. How much? Coltec doesn't say. Coltec's new chart also doesn't show the payment percentage for the Johns-Manville trust, which only pays claims at 7.5%,³⁰ suggesting a future liability share for Johns-Manville of \$33 billion, not \$2.5 billion. The incomplete trust funding data simply does not support Coltec's theory.

The record at the Estimation Hearing did show that as defendants file for bankruptcy, remaining solvent defendants are targeted by plaintiffs because, unlike the trusts, they are able to pay 100% of verdicts and settlements.³¹ This most assuredly means that solvent defendants pay more than they paid in years past when, to use Coltec's words, "all defendants remained in the tort system."³² That was Garlock's experience, which won't be changed by all the tests in a

²⁹ Tr. 3426:13-3427:22, 8/6/13 (Hanly) ("Manville had as much as a 50 percent share, if not higher, of every personal injury case."); Tr. 3539:9-3540:4, 8/7/13 AM (Rice) ("So all of sudden you've got, you know, what at that time we felt was a large number of cases, filed around the country and most people were concentrating on Manville.").

³⁰ See Brown, *supra*, at 596.

³¹ See Tr. 3428:9-25, 8/6/13 (Hanly) ("[T]he shares that [bankrupt entities] had of any given personal injury case ultimately came to be spread among those parties who were remaining in the tort system."); Designated Deposition Testimony of Tim O'Reilly, dated Feb. 22, 2013, at 187:9-188:11 ("You would have that conversation and they say, well, but they're bankrupt and this case is still worth what it is worth and you're here so you're paying more.").

³² Coltec Brief, at 6.

statistician's quiver. Coltec does not dispute this; rather, its overarching complaint is that this is all terribly unfair. But that "unfairness" is a function of joint and several liability and other established legal principles in the tort system.

Coltec also forgets that in earlier periods, "when all defendants remained in the tort system," Garlock flew under the radar screen, paying less than its proportionate share, while insulator defendants bore the brunt of the asbestos payments, paying more than their proportionate share until they had no choice but to file for bankruptcy. Coltec wants Garlock's liability to be determined from the timeframe when others were picking up the tab. But while bankruptcy courts have many powers, time travel is not one of them. Rather, under the law, this Court must determine Garlock's liability for mesothelioma claims by reference to the petition date, June 5, 2010. See 11 U.S.C. § 502(b) ("[I]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition . . .") (emphasis added). Garlock and its parent, Coltec, picked that date. If Coltec had wanted Garlock's asbestos liability to be assessed as of June 5, 1990, for example, when the major insulators were paying the brunt of asbestos claims, Garlock should have filed for bankruptcy then. That the Court must estimate Garlock's asbestos liability by reference to when Garlock filed for bankruptcy is not unfair; it is a function of the law and Coltec's own strategic decisions.

Without accepting its accuracy or admissibility, Coltec's chart is useful for one purpose, namely to make an apples to apples comparison of what asbestos debtors paid into their trusts and what Garlock should pay. This cannot have been Coltec's intent but that comparison shows the reasonableness of Dr. Rabinovitz's estimate. Total trust funding as shown on the chart is

approximately \$31 billion.³³ That is a significant understatement as the chart is missing multiple trusts.³⁴ Actual total trust funding, for all asbestos claims, is over \$44 billion.³⁵ But just using Coltec's understated figure of \$31 billion, if Garlock were to fund a trust with \$1 billion for mesothelioma claims, that amount would equal 1/31st or 3.2% of total mesothelioma trust funding for asbestos debtors. By contrast, Dr. Bates maintains that Garlock's proper several share of asbestos debtor liabilities is 1/22nd or 4.5%, i.e., Garlock should share any verdict with a total of 22 debtors. By Dr. Bates' measure, therefore, Garlock's funding should be more – i.e., \$1.4 billion – not less.

III. Dr. Rabinovitz

Coltec understands that Dr. Rabinovitz's expertise has been recognized by the Fourth Circuit and multiple other courts. See, e.g., In re A.H. Robins, Inc., 880 F.2d 694, 699-700 (4th Cir. 1989). Coltec further understands that Dr. Rabinovitz is an independent, unbiased expert whose estimate is not driven by any desired result but rather by Garlock's own data, the Nicholson-KPMG model, government inflation data, and market-based risk-free discount rates, i.e., all objective and reliable reference points. And Coltec knows that Dr. Rabinovitz, who represents all parties in the asbestos spectrum, would have provided the same estimate regardless of who asked, whether it be the Court, the Debtors, the ACC, or the FCR. Understanding that, Coltec is troubled. In fact, Coltec is so troubled that it has abandoned argument on the merits and resorted instead to a rearguard campaign of off-hand and unsupported remarks in various footnotes. To that end, Coltec says passionately that Dr Rabinovitz cannot be "trusted" and her

³³ Coltec Brief, Exhibit A, Column 3 (Debtor Meso Trust Funding).

³⁴ For example, Coltec's chart does not include the trusts for A-Best, ARTRA, C.E. Thurston & Sons, Congoleum, H.K. Porter, Keene, Leslie Controls, Lummus, Porter Hayden, Raytech, Shook & Fletcher, and UNR. See Brown, supra, at 595-97.

³⁵ See RAND Report, at 28.

opinions “have no credibility”; that her “distinguishing mark as an ‘expert’ witness” is her “lack of curiosity”; that she “selectively” relied on data; and that her work was “an embarrassing effort to disguise a results-driven approach to her ‘estimation.’”³⁶ The FCR does not respond here to those remarks. There is no need. They don’t stand up to the light of the day and the FCR’s Post-Trial Brief addressed, with appropriate detail, Coltec’s and Garlock’s criticisms of Dr. Rabinovitz’s report on the merits. The FCR was interested to note, however, that Coltec’s greatest venom was reserved for the inclusion of fees and disputed settlements in the FCR’s estimate, issues that the FCR agrees should be deferred, as he has already advised the Court in his Post-Trial Brief.

IV. Path Forward

While a long time coming, the conclusion of the Estimation Hearing is, of course, not the end of the road in this case, but only an important step along the path to confirmation. For the multi-week Estimation Hearing to have real utility, the resulting estimate of Garlock’s mesothelioma liabilities must facilitate the development of a confirmable plan of reorganization. Dr. Rabinovitz’s estimate will do just that; Dr. Bates’ estimate will not.

The Estimation Order provides that the Court’s estimate will be “for allowance purposes pursuant to 502(c)” of the Bankruptcy Code, and that the Court will be estimating “the total amount of allowed mesothelioma claims” against Garlock.³⁷ Dr. Rabinovitz’s estimate properly accounts for the merits of the mesothelioma claims, as required by section 502(c), as set forth in section V.B of the FCR’s Post-Trial Brief. Accordingly, the Court will be able to derive an estimate of “allowed” claims to determine whether a proposed plan satisfies the confirmation

³⁶ Coltec Brief, at 13 n.10, 20 n.20, 21 n.21, 33 n.30.

³⁷ Court’s Order for Estimation of Mesothelioma Claims, dated April 13, 2012 (Dkt. No. 2102) (“Estimation Order”), at 2 and ¶ 9.

requirements. See 1 Collier on Bankruptcy ¶ 3.06[1] (16th ed.) (endorsing the use of an “estimation in bulk” of personal injury tort and wrongful death claims “in order to determine whether the feasibility and the other confirmation standards have been satisfied”); see also 4 Collier on Bankruptcy ¶ 502.04[3] (16th ed.) (stating that an estimation pursuant to section 502(c) “generally should result in an allowed claim for all purposes in the bankruptcy case”).

For example, the Court may now rely on Dr. Rabinovitz’s estimate, as the Fourth Circuit did in A.H. Robins, and rule that a minimum of \$949 million of mesothelioma claims will be allowed against Garlock, even before non-mesothelioma disease claims, defense costs, and liquidated and disputed settlements are included. That ruling would conclusively establish that Garlock’s current plan, which allows Coltec to retain all of its equity interests in Garlock while the recovery of asbestos creditors is capped at \$270 million (by Garlock’s own estimate), does not satisfy the absolute priority rule. See 11 U.S.C. § 1129(b)(2)(B). There is good reason to expect that Garlock will, in response, finally come forward with a legitimate alternative to its current “sham” plan.³⁸ EnPro has demonstrated its fervent desire to obtain the benefit of a section 524(g) channeling injunction and to preserve Coltec’s equity interests in Garlock. Further, EnPro has the ability to access the debt and equity markets and sponsor a plan that combines new capital with Garlock’s existing cash, insurance, and other assets to properly allocate in excess of \$949 million of value to mesothelioma creditors.

Alternatively, if Garlock and EnPro fail to present the Court with a confirmable exit strategy, the Court’s estimation ruling will enable the FCR and the ACC to determine whether, and to what extent, Garlock is solvent, and then formulate a section 524(g) plan that, if

³⁸ Hearing Transcript, dated Jan. 26, 2012 (Dkt. No. 1865), at 10:16-19 (stating that Garlock’s plan is “not something that could be confirmed” and looked “like a sham”).

applicable, allocates the equity interests in Garlock between the asbestos creditors and Coltec.³⁹ This allocation would moot Coltec's and EnPro's primary objection to a nonconsensual "cram down" plan—that redistributing the equity interests in Garlock would violate a "corollary" to the absolute priority rule that creditors cannot recover more than the full amount of their claims.

In this manner, Dr. Rabinovitz's estimate offers the Court a clear path forward to the final resolution of these long-running cases.

V. Conclusion

In conclusion, the FCR too looks to Mark Twain, who, despite being one of the best writers of his generation, never won the Nobel Prize for Literature. But the FCR does not invoke Mark Twain to suggest Coltec or its experts are damned asbestos statistics liars. Rather, the FCR invokes Mark Twain for two things that he said that seem particularly apropos.

The first is: **"The art of prophecy is very difficult, especially with respect to the future."** Courts join Mark Twain in understanding that future estimates are difficult and never perfect. They also understand that lack of perfection is not just cause to abandon the effort; rather, they look to estimates based on reality and reliable data. In Garlock's case, such an estimate (Dr. Rabinovitz's) suggests that Garlock, on an average individual basis, should pay \$36,000 to fully and finally resolve their future liability to mesothelioma victims. Is that the perfect number? No one knows because it is a future number. Is it a number that perfectly represents Garlock's culpability? No one knows because that is not a calculation that science allows us to make. Is it a number that perfectly represents the injury to mesothelioma victims? No, because each victim is different. But we do know that it is a reasonable and reliable number

³⁹ See Estimation Order, ¶ 12 (recognizing that "[t]he debtors' estimated mesothelioma liability may become the subtrahend of [a solvency] calculation at some point").

because it is based on Garlock's own experience and is a price that Garlock's own counsel would have readily accepted in the years leading up to its bankruptcy petition.⁴⁰

The second is: **“Plan for the future because that's where you are going to spend the rest of your life.”** Garlock, Coltec and EnPro intend to obtain a permanent discharge of future mesothelioma claims through this bankruptcy. Whatever aggregate estimate this Court fixes for mesothelioma liabilities, future claimants, for the next four decades, will be bound by its limits. The FCR, therefore, urges the Court to be especially wary of Coltec's selective efforts to minimize Garlock's liabilities.

Accordingly, for all these reasons and those set forth in the FCR's Post-Trial Brief, the FCR respectfully requests that the Court estimate Garlock's mesothelioma liability at \$949 million, excluding defense costs and liquidated and disputed settlements.

Dated: November 26, 2013

Respectfully submitted,

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⁴⁰ Tr. 4669:17-4670:2, 8/22/13 (Glaspy) (Garlock's long-time asbestos defense counsel, discussing settling mesothelioma claims in 2004 with the Kazan firm for an average amount of \$160,000 and acknowledging that: "If I could have settled them for any less money than I did, it would have been a much better result for Garlock.").

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